

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH AND ADDICTION SERVICES 1/  
BUREAU OF HEALTH SYSTEM REGULATION  
DIVISION OF MEDICAL QUALITY ASSURANCE

Henry Jesionka, L.O.  
License No. 000734  
696 S.W. Violet Street  
Port St. Lucie, FL 34983

Petition No. 920713-38-002

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND:

The Department of Health Services ("Department") presented the Connecticut Board of Examiners for Opticians ("Board") with a Statement of Charges against Henry Jesionka ("Respondent") dated October 19, 1992. (Department Exhibit 2). The Statement of Charges alleged in one count that the Respondent violated Connecticut General Statutes §20-154 by neglecting to pay a civil penalty imposed previously by the Board. (Department Exhibit 2).

Prior to the initiation of the instant charges, the Department offered the Respondent, via letter dated September 30, 1992, the opportunity to attend a compliance conference scheduled on October 6, 1992. Such compliance conference was offered to provide the Respondent an opportunity to demonstrate compliance with all lawful requirements for the retention of his license.

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1/ At the time this action was initiated, this agency was known as the Department of Health Services. Effective July 1, 1993, the Department of Health Services merged with the Connecticut Alcohol and Drug Abuse Commission to form the new Department of Public Health and Addiction Services. Public Act No. 93-381.

(Department Exhibit 1). The Respondent received the letter on October 3, 1992. (Department Exhibit 1). The Department conducted a compliance conference with the Respondent by telephone.

The Department sent the Notice of Hearing and Statement of Charges to the Respondent via certified mail, return receipt requested, on June 2, 1993. (Department Exhibit 2). The Respondent received same on June 10, 1993. (Department Exhibit 2). The Respondent did not file an Answer to the Statement of Charges.

The Board held an administrative hearing on August 11, 1993 to adjudicate the Respondent's case. The Respondent did not appear at the hearing nor did a representative appear on his behalf. Ellen Shanley, Esq. represented the Department. At the hearing, the Department moved that all allegations in the Statement of Charges be deemed admitted by the Board, pursuant to Regulations of Connecticut State Agencies §19-2a-18(b). The Board deferred its decision until the fact finding, at which time it granted the Department's motion.

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54, and the Regulations of Connecticut State Agencies §19-2a-1, et seq. All Board members received copies of the entire record. All Board members attest that

they have either heard the case or read the complete record. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

FINDINGS OF FACT:

1. The Respondent held Connecticut Optician License No. 000734 until it expired on November 30, 1992. (Department Exhibits 2 and 3).
2. The Respondent's license did not become void until February 28, 1993, pursuant to Connecticut General Statutes §19a-88(f).
3. The Board issued a Memorandum of Decision against the Respondent's license in January 1988. (Department Exhibits 2 and 4).
4. The Respondent did not appeal the January 1988 Memorandum of Decision. (Transcript 8/11/93 p. 10).
5. The Department did not introduce evidence to indicate whether the Respondent received the initial issuance of the Memorandum of Decision in January 1988. The Memorandum of Decision was mailed again on April 7, 1992, by certified mail, return receipt requested and first class mail,

postage prepaid. (Department Exhibit 5). The certified mail copy was never claimed. (Department Exhibit 6). However, the copy sent via first class mail, postage prepaid, was not returned to the Department. (Transcript 8/11/93 pp. 12-13).

With Regard to the First Count:

6. In the First Count, the Department alleged that the Respondent violated Connecticut General Statutes §20-154 by not paying the civil penalty of \$250.00 that was ordered in the January 1988 Memorandum of Decision.
7. The 1988 Memorandum of Decision contains an Order which clearly states that the Respondent owes a civil penalty of \$250.00, payable to the State of Connecticut on or before March 28, 1988. (Department Exhibit 4).
8. By letter dated April 7, 1992, Lynne Hurley, an investigator for the Department's Public Health Hearing Office, informed the Respondent that the civil penalty was now due on or before June 29, 1992, or the Department would seek further actions against his license and inform the Florida Health Department of his lack of compliance. Ms. Hurley sent this letter, along with a copy of the January 1988 Memorandum of Decision, as set forth in Paragraph 5 above. (Department Exhibit 5).

9. Atty. Shanley stated that the Respondent advised her, during his telephone compliance conference, that he had received the Memorandum of Decision. (Transcript 8/11/93 p. 16).
10. The Respondent has never paid this \$250.00 civil penalty. (Transcript 8/11/93 pp. 12-14).
11. The Respondent is currently licensed in Florida as an optician. (Transcript 8/11/93 p. 14).

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes §20-154 provides in pertinent part:

The certificate of registration, permit or license of any optician or of any optical permittee may be revoked, suspended or annulled or any action taken under section 19a-17 upon decision after notice and hearing by the board for any of the following reasons: ... violation of any provision of this chapter or any regulation adopted hereunder....

Disciplinary action may be taken against a person who has held a valid professional license issued by the Department of Public Health and Addiction Services within eighteen months of the imposition of such disciplinary action. Connecticut General Statutes §19a-14a. The Respondent's optician license was current at the time the Department initiated an investigation against him. His license did not become void until February

28, 1993. The Department continues to have jurisdiction over the Respondent's license during the subsequent eighteen month period. Accordingly, the Board may now take disciplinary action against that license.

The Department sustained its burden of proof as to the First Count. Pursuant to Connecticut General Statutes §19a-17 and §20-154, the Board has the authority to impose disciplinary sanctions against licensed opticians upon finding the existence of good cause. The Board did discipline the Respondent previously, by means of the 1988 Memorandum of Decision.

Although it is not clear that the Respondent received the initial mailing of the Memorandum of Decision in 1988, there is no evidence that it was not received in 1992. Also, the Respondent indicated to Attorney Shanley that he had received the Memorandum of Decision. The Board is greatly disturbed that the Respondent is choosing to ignore its prior ruling.

By not paying his \$250.00 fine, the Respondent violated an Order of the Board. In addition, the Board has ruled that all allegations in the Statement of Charges shall be deemed admitted. Accordingly, the Board finds that the Respondent violated Connecticut General Statutes §20-154.

ORDER:

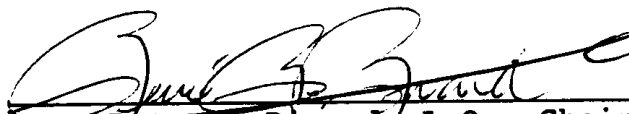
Pursuant to the authority vested in it by Connecticut General Statutes §19a-17 and §20-154, the Board orders the following in this case against Henry Jesionka, Licensed Optician, Petition No. 920713-38-002, Optician License No. 000734:

1. For the First Count the Respondent's Optician License is revoked.
2. In addition to the outstanding civil penalty of \$250.00, the Respondent shall be assessed a civil penalty of one thousand dollars (\$1,000.00). The total penalty of \$1,250.00 shall be paid by certified check, payable to Treasurer, State of Connecticut, sent to the Public Health Hearing Office, State of Connecticut Department of Public Health and Addiction Services, 150 Washington Street, Hartford, Connecticut 06106, and due within thirty days of the effective date of this Order. The certified check shall include the Department petition number on its face for identification purposes.
3. The Board shall not entertain any requests by the Respondent for future optician licensure in Connecticut unless the penalties imposed in Paragraph 2 above are paid.

4. Copies of this Memorandum of Decision shall be sent to the Chairperson of the Board in Florida responsible for licensing opticians, and the Clearinghouse for Licensure Enforcement and Regulation.
5. This Order becomes effective upon the signature of the Board Chairperson.

Connecticut Board of Examiners for Opticians

26 May 1994  
Date

  
by: Rene R. Rivard, L.O., Chairperson

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